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| <b>Notice of Allowability</b> | <b>Application No.</b>        | <b>Applicant(s)</b> |
|                               | 10/088,222                    | KOHLER ET AL.       |
|                               | Examiner<br>Sanza L McClendon | Art Unit<br>1711    |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to 1/8/04.
2.  The allowed claim(s) is/are 1-15 and 18.
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

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## DETAILED ACTION

### ***Response to Amendment***

1. In response to the Amendment received on January 8, 2004, the examiner has carefully considered the amendments. The examiner acknowledges the cancellation of claims 16-17. .

### ***Response to Arguments***

2. Applicant's arguments, see Amendment, filed January 8, 2004, with respect to claims 1-18 have been fully considered and are persuasive. The rejection of claims 1-3, 5-6, 8-9, 11-15, and 18 under 35 USC 102(b) as being anticipated by La Bassi et al (EP 0 386 650 A2 and US 5,168,087) has been withdrawn. The rejection of claim 7 under 35 USC 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as being unpatentable over La Bassi et al (EP 0 386 650 A2 and US 5,168,087) has been withdrawn. As pointed out by applicant La Bassi et al does not teach a dispersion, which is a liquid/solid system, but teaches mostly suspension systems, which is a liquid/liquid system. While La Bassi et al teaches using 2,4,6-trimehtylbenzoyl diphenylphosphine oxide in example 9 in an aqueous dispersion, La Bassi et al does not teach grinding said dispersion to obtain a suspension having a particle size of less the 12 mm. Therefore the examiner deems that La Bassi et al does not expressly teach and/or fairly suggest an aqueous, storage stable, non-sedimenting suspension as claimed by the instant invention.

### ***Allowable Subject Matter***

3. Claims 1-15 and 18 are allowed.
4. The following is an examiner's statement of reasons for allowance: The primary reasons for allowance is the limitation specifying that the aqueous, storage stable, non-sedimenting suspension has a particle of less than 12 mm.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sanza L McClendon whose telephone number is (571) 272-1074. The examiner can normally be reached on Monday through Friday 7:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sanza L McClendon

Examiner

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SMc

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700